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passenger made his contract with the ticket agent and the ticket was handed over merely as a receipt, then he would perhaps have had a contract right to be carried to his intended destination. But, as was pointed out in 1 HARVARD LAW REVIEW, 17, the ticket agent has no authority to make contracts, — his duty is merely to sell tickets. The ticket is the contract, and by its terms the passenger is bound; and in a case like that under discussion, while he doubtless has a right of action against the company for selling him the wrong contract, he has no action for being put off the train at the terminus provided by that contract.

Courts have fallen into error, it would appear, from failure to distinguish between the case of a ticket which is, on its face, not good for the journey intended by the passenger, and that of a ticket which is apparently good for the intended journey, and declared to be so by the ticket agent, although by the regulations of the company it is in fact not good. In the latter case the contract is ambiguous, and the passenger, under the circumstances, surely has a right to insist on the interpretation given by the company's agent; but that is no reason why he is not bound by the ticket in the former case, where the interpretation of the contract is perfectly clear. (See Hutchinson on Carriers, § 580, *j*.)

The analogy between railroad tickets and bills and notes has often been remarked, and is treated of at length in the article in the HARVARD LAW REVIEW referred to above. A ticket is not a consensual but a formal contract; and although assignable in the absence of words of limitation, it is, like other negotiable instruments, not assignable in part. The second of the two recent cases is of note in this connection. In *Curlander v. Pullman Palace Car Co.*, a case decided in the Superior Court of Baltimore, and reported in 28 Chicago Legal News, 68, the novel question was raised as to the right of a purchaser of a sleeping car section, who leaves the train before reaching his destination, to transfer the use of the section to another passenger for the rest of the journey. The court held that he had that right. This decision can apparently be supported only on the ground that a sleeping car ticket is radically different from a railroad ticket; that it is not a formal contract of transportation, but rather evidence of the purchase of certain space in the sleeping car for the specified journey. The existence of so marked a distinction between the two sorts of ticket may well be doubted.

THE RIGHT TO PRIVACY — THE SCHUYLER INJUNCTION. — The case of *Schuyler v. Curtis*, before noticed in its earliest stage in 5 HARVARD LAW REVIEW, 148, has been finally adjudicated by the Court of Appeals of New York in favor of the defendant. The bill was for an injunction to prevent the defendants from completing a statue of a deceased lady of whom the plaintiff was the nephew and step-son, and from displaying it first at the World's Fair under the title of "The Typical Philanthropist," and then in the rooms of the Ladies' Art Association in New York. Mr. Justice Peckham in dismissing the bill took especial care to say that the decision could not be taken as a denial of the right to privacy, or of that altogether independent right which the next of kin of a deceased person might have in the privacy of that person's past life, and he put the decision upon the ground that in the case in question there were no circumstances which gave the plaintiff good reason to pray for an injunction. The reasoning was that the deceased could not have shrunk from the anticipation of a publicity after her

death, however much she might have done so had it been attempted during her life, and that consequently no evidence of her desire to avoid publicity could be relevant to the plaintiff's case. Further and in general the statute was not to be used in any way which could give a "sane and reasonable person" any complaint on his own account, though he were her nearest relative.

Reduced to its formal parts the decision would therefore seem to be a denial only of equitable jurisdiction, and not of the plaintiff's legal right. It may be fairly said that the court admitted that a tort was proposed by the defendant, but found no sufficient reason for giving the extraordinary remedy of a court of equity, and left the plaintiff to his remedy at law. The case is quite new in its particular features, since the injunctions previously granted, *e. g.* against the reproduction of photographs, publication of letters, and the like, were all cases where the defendant proposed to give a publicity for his own profit, regardless of whether it was calculated to do honor to the plaintiff or not. Moreover, this was a case where equitable jurisdiction cannot be said to flow necessarily from the facts, as in the case of a proposed tort to land, but is rather analogous to a bill for the recovery of a chattel in specie, depending upon its particular circumstances for equitable jurisdiction. In the exercise of its discretion in cases of this sort, a court has such latitude that it is impossible, or at least presumptuous, to say it has come to a wrong decision unless that be obviously absurd and unreasonable. So in this case the decision of the court must be held to be justified even by those who might disagree with the result, had it been their place to decide the case, for there is surely nothing preposterous or absurd in saying that here the plaintiff's loss could be sufficiently compensated by money damages.

But the reasoning of the court, with all respect to the learned judge who delivered the opinion, is not altogether satisfactory. Since the question before them was not to be governed by the decisions of the lower courts, and their position was not that of reviewing the decision of an independent tribunal, *e. g.* the verdict of a jury, there was no occasion to hold that no "sane and reasonable person" could uphold the decision of those lower courts, and it was a statement which their very unanimity in combination with the vigorous dissent in the Court of Appeals itself ought to have effectually disproved.

Further, the line of reasoning by which the plaintiff's evidence of the deceased's dislike of publicity was excluded as irrelevant to his own proof of damages can be assented to with difficulty. It is surely a mistaken view of the ordinary facts of human feeling to say that a naturally retiring person can tolerate the anticipation of a publicity after his death from which he would shrink painfully during his life. Surely a person to whom privacy is of any value whatever must contemplate a future publicity with almost as much chagrin as a present one. Could the learned judge, for example, bear for an instant the thought of a public representation or description of his courtship after his death? Now if this is so, the knowledge of how great annoyance would have been caused to the deceased, had she had knowledge of the defendant's proposition, was a very material element in the plaintiff's damages, for surely it is a source of pain to every normal person to know that that is contemplated which would have caused suffering to any one dear to him, who is now dead. Indeed, it is unnecessary to give proofs of that feeling, they are so obvious.

Finally, the case seems a good instance of the ill effects of the loose sys-

tem of pleading used in New York. It is doubtful whether the decision would have been received by the press in general, as it has been, as a denial of the right to privacy, were the jurisdictions of law and equity distinguished, and certainly it would have been more easily limited to its proper scope. As has been intimated, it cannot fairly be complained of, however much some of the reasoning of the opinion may seem to need further exegesis to gain acceptance.

RECENT CASES.

AGENCY — LIABILITY OF SERVANT TO THIRD PERSONS. — The agents of a corporation charged with the duty of erecting on its grounds structures for the accommodation of the public negligently permitted a defective structure to be erected. *Held*, that they were guilty merely of nonfeasance, and therefore were not liable to persons injured by reason of such defects. *Van Antwerp v. Linton et al.*, 35 N. Y. Supp. 318.

There is no doubt that when an agent is guilty merely of nonfeasance he is responsible therefor to his principal alone. *Lane v. Cotton*, 12 Mod. 472; *Felton v. Swan*, 62 Miss. 415. It is when we attempt to draw the line between nonfeasance and misfeasance that the question becomes a puzzling one. The court here follows previous decisions in New York, as well as the weight of authority in other jurisdictions, in limiting the definition of misfeasance to the violation of a duty imposed upon the agent independently of his employment. *Burns v. Petheal*, 75 Hun, 437; *Delaney v. Rochereau*, 44 Am. Rep. 456. By the terms of this definition, nonfeasance only can be attributed to the defendants; and there would seem to be no good distinction between the negligent performance and the negligent omission of performance of a duty imposed by an employer, when in both cases injury results to third persons. The authorities are not wanting, however, which declare the first to be misfeasance, and the second nonfeasance. *Osborne v. Morgan*, 130 Mass. 102.

BILLS AND NOTES — ANOMALOUS INDORSER — GUARANTOR — STATUTE OF FRAUDS. — Defendant indorsed in blank a note after delivery and while in the hands of payee. Parol evidence showed that he intended to assume the liability of guarantor. *Held*, such act authorizes the payee to write over the signature the contract of guaranty in full, and this constitutes a sufficient memorandum in writing to satisfy the Statute of Frauds. *Peterson v. Russell*, 64 N. W. Rep. 555 (Minn.).

This is the first time the point in question has come up for decision in Minnesota. The authorities are divided. In accord, see *Kealing v. Vansickle*, 74 Ind. 529; *Beckwith v. Angell*, 6 Conn. 315; *Stowell v. Raymond*, 83 Ill. 120. *Chaddock v. Vanness*, 35 N. J. Law, 517, cited by the court as authority, is not in point. The New Jersey decisions are *contra* to the principal case. See *Hayden v. Weldon*, 42 N. J. Law, 128. For further authorities holding that a blank indorsement of a note in the hands of the payee does not satisfy the Statute of Frauds, and that payee has no authority to fill in the contract of guaranty, see *Temple v. Baker*, 125 Pa. St. 634; *Culbertson v. Smith*, 52 Md. 628. For the three doctrines applied where the anomalous indorsement is made before delivery to payee, see 7 HARVARD LAW REVIEW, 373.

CARRIERS — SLEEPING CARS — RIGHT TO TRANSFER USE OF SECTION FOR PART OF JOURNEY. — *Held*, that a purchaser of a sleeping car section, who leaves the train before reaching his destination, may transfer the use of the section to another passenger for the rest of the journey. *Curlander v. Pullman Palace Car Co.* (Baltimore Superior Court). See NOTES.

CARRIERS — WRONG TICKET — EJECTION FROM TRAIN. — *Held*, that where a passenger requests and pays for a ticket to A. and by a mistake of the ticket agent is given a ticket to B. only, with which he enters the train without noticing the error, he has a right to ride to A. on making proper explanations to the conductor; and can recover from the company for ejection by the conductor at B. *Evansville & T. H. R. R. Co. v. Cates*, 41 N. E. Rep. 712 (Ind.). See NOTES.

CHOSE IN ACTION — ASSIGNMENT — NOTICE TO DEBTOR — PRIORITY. — *Held*, a prior assignee of a chose in action will be protected, though he has given no notice of the assignment either to the subsequent assignee or the obligor. *Fortunato v. Patten*, 41 N. E. Rep. 572 (N. Y.).